IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1168 OF 2006

Bhavesh Sudhakar Dingorkar & anr. ... Petitioners

V/s

Mominpada Masjid Yakub Beg Trust ... Respondent

Mr. Rajesh S. Datar for the petitioners.

Mr. Rajiv Patil for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 27TH FEBRUARY, 2006

P.C.:

1. Heard both sides. Perused the record.

2. Rule. Rule made returnable forthwith.

3. The petitioners have filed this petition against the judgment and order passed by the Addl. District Judge, Raigad at Alibag dismissing the appeal by order dated 13.1.2006 holding that there is no case made out by the petitioner-defendants to remand the proceeding to the Trial Court so as to be heard on merits.

4. The respondent Trust is the landlord who filed the Civil Suit No. 108 of 1999 against the petitioner-defendants for recovery of possession of the suit premises which was let out to them and when the suit came up for hearing on 20.10.2001, petitioners were absent and consequently judgment was pronounced on the same date i.e. on 20.10.2001.

Thereafter the petitioner-defendants filed the appeal against the order and application for condonation of delay was made therein seeking to set aside the judgment and order passed on 20.10.2001 with request for condonation of delay of one year seven months and fourteen days'.

5. The learned lower appellate Court Judge, on merits, condoned the delay by allowing the said application, however, refused to allow the appeal which was sought for remand of the matter to be heard on merits. It was observed by the lower appellate Court that the petitioners-defendants on facts could not agitate and they could only point out the provisions of law based on which they could contend that the suit ought not have been decreed.

5. In my considered view, taking into account the fact that if the delay was condoned on merits on the basis of available evidence which shows that it was physically impossible for the defendants to attend the Court and prosecute the suit just in the interest of justice, it is necessary to remand the suit for trial after permitting the petitioner-defendants to file their written statement and plead their case effectively on merits in order to rebutt the respondent-plaintiff's evidence which was not allowed.

6. Therefore, I am of the opinion that, it is a fit case to remand the matter to the Trial Court with certain directions in order to have effective adjudication between the parties on merits, in the interest of justice.

7. Hence, Rule is made absolute.

The ordeer dated 13.1.2006 passed by the Addl. District Judge dismissing the appeal is set aside.

The entire suit is remanded to the Trial Court with direction that the defendants shall be given opportunity to file their written statement and lead their evidence

in rebuttal of the allegations made by the plaintiffs on merits and the suit shall be disposed of after giving both parties opportunity to lead their evidence within six months from the date of this order.

With this direction, the petition stands disposed of accordingly with no order as to costs.

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